IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU**

**WRIT PETITION NO: 24890 of 2004**

Between:

Shanker Goud S/o. Yanadaiah Goud, Occ: Sarpanch, Gram Panchayat, Jawaharnagar of Shameerpet Mandal, R.R.Dist.

**..... PETITIONER**

AND

1. The Government of Andhra Pradesh rep. by its Principal Secretary to Government, Panchayat Raj and Rural Development (PTS.II) Department, Secretariat Buildings, Hyderabad.

2. The Commissioner, Panchayat Raj and Rural Development, Andhra Pradesh, Hyderabad.

3. The Collector (Panchayat Wing), Rangareddy District.

4. Sri Odugu Raghavulu, Upa-Sarpanch, Jawaharnagar Gram Panchayat, Shameerpet Mandal, R.R.District.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Order, Writ or Direction more particularly one in the nature of Writ of Certiorari, to call for the records pertaining to the G.O.Ms.No., 1994 dt.23-12-2004 on the file of 1st respondent and to quash the same as highly illegal, arbitrary, biased and in clear violation of the observations made by this Hon'ble Court in its order
dt.02-07-2004 in W.P.No.11007/2004 and to grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.

**Counsel for the Petitioner: MRS.S.NANDA**

**Counsel for the Respondent Nos.1 to 3 : GP FOR PANCHAYAT RAJ & RURAL DEV.**

**Counsel for the Respondent No.4: SMT. JYOTHI ESWAR GOGINENI**

**The Court made the following:**

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**ORDER:**

The case of the petitioner, whose order of removal was confirmed by the Government in an appeal preferred by him by its order dated 23.12.2004 impugned in this petition, is that after he received the show cause notice dated 15.05.2004 issued to him under Section 249(1) of the A.P. Panchayat Raj Act, 1994 (the Act), he made a request to the Panchayat Officer to handover the Gram Panchayat records to him, to enable him to specifically and clearly answer the charges levelled against him stating that he would return those original records along with his explanation but without considering his request and without handing over the records to him, the Collector (3rd respondent) issued proceedings dated 22.06.2004 removing him from the post of Sarpanch and so he filed W.P.No.11006 of 2004 questioning the said order and that petition was disposed of with a direction to him to avail the remedy of appeal under Section 249(7) of the Act, raising all the contentions and so he preferred an appeal to the first respondent with a request for a direction to the District Panchayat Officer to handover records to enable him to submit his explanation, but without considering the contentions raised, the appeal was mechanically and in a routine manner dismissed and hence the same is liable to be set aside and an opportunity has to be afforded to him to peruse the records and submit his explanation.

2. Third respondent filed his counter affidavit on behalf of the respondents 1 to 3 contending that the petitioner, who permitted to peruse the records in the Office of District Panchayat Officer having failed to avail the said opportunity cannot be heard to say that he was not afforded an opportunity to peruse the records. The records were not handed over to him because there is a likelihood of his tampering with them and so there are no grounds to interfere with the proceedings impugned.

3. The case of the fourth respondent, the Upa-Sarpanch, is that since several allegations of the petitioner misappropriating the panchayat funds and tampering with the records of the panchayat were made, records of the panchayat were seized from the custody of the petitioner and since petitioner was actually working as Sarpanch till December, 2004 till the passing of the orders impugned, he was having full access to all the records of the panchayat, he cannot be heard to say that he had no opportunity to peruse the records to offer his explanation and since he did not, admittedly, offer his explanation for the charges levelled against him, petitioner is not entitled to

any relief.

4. The admitted facts are for the show cause notice dated 15.05.2004 issued to him petitioner sent a letter dated 28.05.2004 requesting the Panchayat Officer to handover the records to him to enable him to give a reply to the show cause notice. Notice dated 07.06.2004 sent to the petitioner, asking him to peruse the records in the office was returned 'unclaimed' and petitioner failed to send a reply to the show cause notice. So, third respondent passed the order dated 22.06.2004 removing the petitioner from the office of the Sarpanch on the ground that he failed to send a reply to the show cause notice issued to him with regard to misappropriation of Rs.37,53,531/-. Questioning the same, the petitioner filed W.P.No.11007 of 2004, which was disposed of with a direction to the petitioner to avail the remedy of appeal under Section 249(7) of the Act, raising all the contentions including the contention relating to non-providing of relevant records, and the same was dismissed by the order impugned.

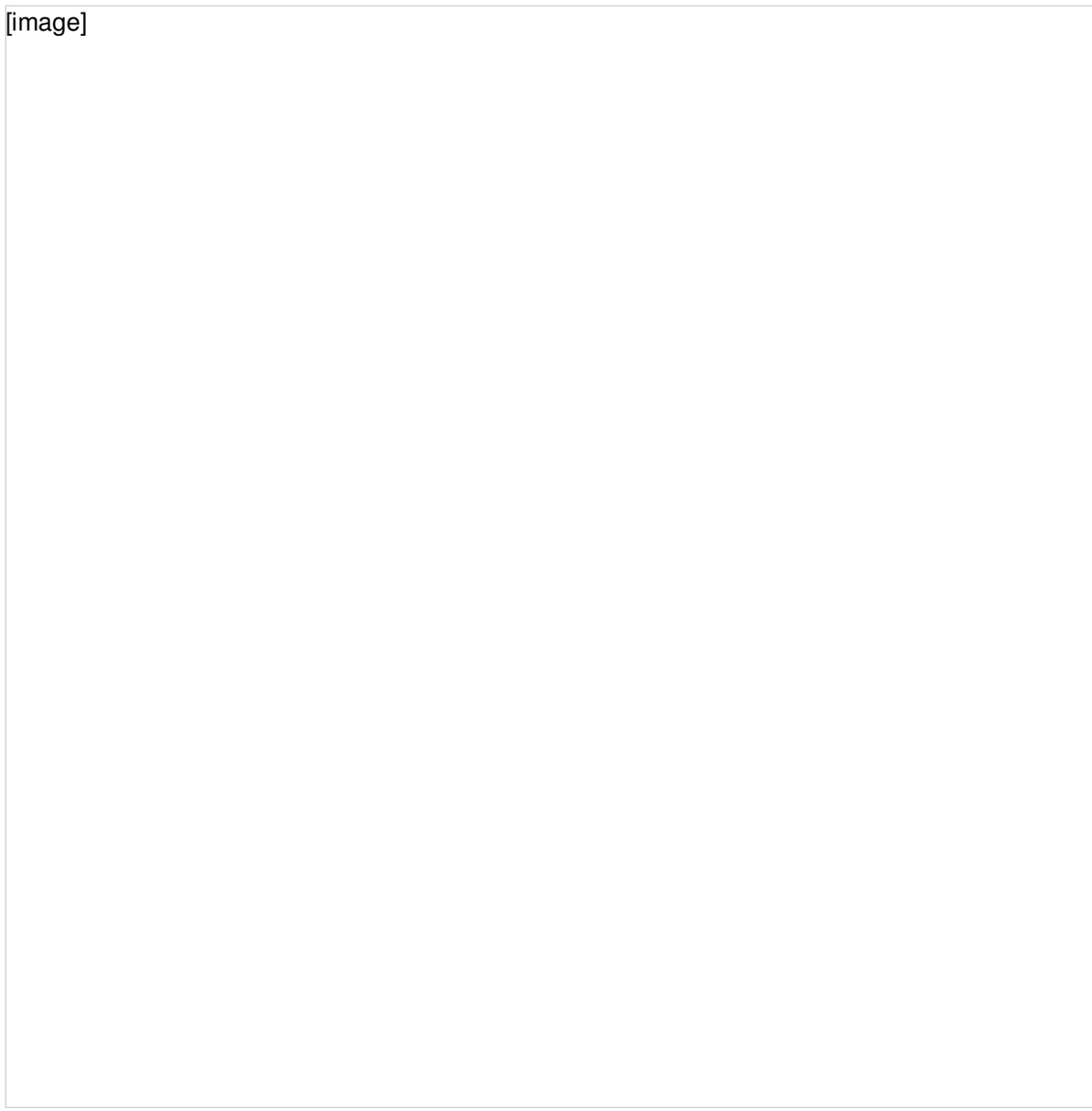
5. The contention of the learned counsel for the petitioner is that since the second respondent in W.P.No.13726 of 2004 admitted that notice dated 07.06.2004 sent to the petitioner informing him that records can be verified at District Panchayat Officer's office within seven days was returned with an endorsement 'unclaimed', it cannot be said that petitioner was given a reasonable opportunity to offer his explanation and so the assumption on the part of the respondents that petitioner did not offer explanation in spite of due opportunity being given to him is not and cannot be true. It is her contention that fourth respondent can have no say in this petition because in the Writ Appeal No.1618 of 2004 filed by him questioning the order dated 07.09.2004 in W.P.No.13726 of 2004, the Division Bench dismissed the appeal observing "We fail to understand how the appellant can challenge the order by which he is not aggrieved at all" and also relied on **BUNTUPALLY PATHANA v. DISTRICT COLLECTOR (PANCHAYAT WING), EAST GODAVARI DISTRICT AND ANOTHER** where it is held that Upa-Sarpanch has no say in the matters relating to suspension or removal of Sarpanch. Relying on **D.SATHI REDDY v. COMMISSIONER, PANCHAYAT RAJ, AP, HYDERABAD AND OTHERS** she contended that since principles of natural justice require copies of document relied on being furnished along with the show cause notice, not given an opportunity to the petitioner to peruse the records is but violation of the principles of natural justice. She also placed strong reliance on **JITENDRA BARAI v CHAIRMAN REGIONAL TRANSPORT AUTHORITY, BOLONGIR AND ANOTHER** in support of her contention that returning of a notice without service on the addressee does not amount to due service of the notice. Relying on **STATE OF KERALA AND OTHERS v T.K.UDAYA SANKARAN AND OTHERS** the learned Government Pleader contended that since return of registered letter with an endorsement 'not known' can be treated as due service, return of the notice with the endorsement 'unclaimed' also amounts to due service.

6. In view of the contentions raised, the short point for consideration is whether petitioner had a

due opportunity to explain the allegations made against him or not.

7. The specific case of the third respondent is that due to apprehension that petitioner may tamper with the records, by the notice dated 07.06.2004 sent by registered post with acknowledgement due, he was asked to come to the office of the District Panchayat Officer and peruse the records and that the said notice was returned with an endorsement 'unclaimed'. So, the question whether return of the registered notice with an endorsement 'unclaimed', can be said to be due service of notice or not.

8. To satisfy myself as to which address the notice dated 07.06.2004 was sent to the petitioner, on my direction, the learned Government Pleader produced the concerned record. From that file it is seen that on 17.05.2004 a registered notice addressed to "the Sarpanch Gram Panchayat, Jawaharnagar, Shameerpet Mandal, Ranga Reddy District" (i.e. the petitioner) enclosing
(1) ROC.No.A1/1034/2000 dt.15-5-2004, (2) ROC.No. B1/1034/ 2000 dt.15-5-04, and (3) ROC.No.B2/1034/ 2000 dt.15-5-04
(i.e. show cause notice as to why he should not be removed from the post of Sarpanch) was sent, and the same was returned with an endorsement dated 28.05.2004 'unclaimed'. But, surprisingly, on the same day i.e. on 28.05.2004, even without actually receiving the letter sent to him by registered post, petitioner put in an application in Telugu to the third respondent i.e. District Collector, Ranga Reddy District, reading—



So, it is clear that petitioner even without actually receiving the show cause notice was aware what proceedings No.B2/1034/2000 dated 15-05-04 are and submitted the above application to the third respondent. Since there is allegation relating to tampering with records by petitioner, third respondent and his subordinate officers might have felt that there is a likelihood of the petitioner tampering with the records, if they were to be handed over to him, and so by the letter dated 07.06.2004 petitioner was asked to attend the office of the District Panchayat Officer within a week and peruse the records. The said letter was addressed to

"To

Sri Shankar Goud, Sarpanch,

Gram Panchayat, JAWAHARNAGAR,

Shameerpet Mandal,

Ranga Reddy District

500087"

and was returned with an endorsement dated 03.07.2004 'unclaimed'. That the address noted on the registered letter is the correct address of the petitioner cannot be doubted because petitioner

admittedly was the Sarpanch of Jawaharnagar and it is not as though the post man does not know who Sri Shankar Goud, Sarpanch, Gram Panchayat, Jawaharnagar, Shameerpet Mandal, is. Since the petitioner affixed his signatures to the affidavit filed in support of this petition in English, and from the way in which he signed, it is easy to see that petitioner is a literate. Since the above 'unclaimed' register letter contains the name of sender as "Despatch Clerk, Office of the District Panchayat Officer, Ranga Reddy Dist., Zilla Parishad Building, Khairtabad, Hyderabad–500004" describing the contents therein as

(1) ROC.No.B2/1034/2000 dt.22-6-04, (2) ROC.No.B2/1034/2000 dt.22-6-04, and (3) ROC.No.B2/1034/ 2000 dt.22-6-04, and since petitioner knows what ROC.No.B2/1034/2000 are, there is every likelihood of petitioner avoiding receipt of that notice to buy time or for other reasons. In **JITENDRA BARAI** case (3 supra) relied on by the learned counsel for the petitioner, the Orissa High Court was considering Section 33(1)(b) of Motor Vehicles Act, 1939. In my considered opinion, the said decision should be deemed to have been impliedly overruled in view of the ratio in **K.BHASKARAN v. SANKARAN VAIDHYAN BALAN** where it is held that notice sent to the correct address by post when returned with an endorsement 'unclaimed' can be deemed to have been served on the sendee unless he proves that it was not really tendered and that he was not responsible for such non-service. In **T.K.UDAYA SANKARAN** case (4 supra) also it was held that even when the registered letter is returned with an endorsement 'not known', due service can be presumed. As stated earlier, even for the show cause notice sent to him by registered notice, he got it returned with the same type of endorsement 'unclaimed' but made a representation that he may be given custody of the records. Therefore, it is easy to see that the petitioner having full knowledge of the contents of the envelop tendered to him, willfully and deliberately did not claim it, and so he cannot be heard to say that he was not given a due opportunity. A person, who fails to avail the opportunity granted to him, cannot be heard to complain that he was not given a due opportunity. This apart, as rightly contended by the learned Government Pleader, in view of Section 25(b) of the Act, which enables the Sarpanch to have full access to the records of the Gram Panchayat, since he admittedly was working as Sarpanch of Jawaharnagar Gram Panchayat till December, 2004, nothing prevented the petitioner from exercising his power to peruse the records while working as Sarpanch and submit his explanation. So, it is clear that though he had opportunity to peruse the records for which he statutorily has an access, he failed to avail the opportunity, with a view o drag on proceedings and, so, cannot be heard to say that he had no opportunity to peruse the records.

9. Since the petitioner against whom serious allegations are made had failed to reply to those allegations though he was given an opportunity to peruse the record, I find no merits in this petition and so the petition is dismissed with costs. Advocate fee is fixed at Rs.1,500/- (Rupees one thousand five hundred only).

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(C.Y.Somayajulu, J.)

Dt: 14-03-2005.

Cvrk

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Principal Secretary to Government, Panchayat Raj and Rural Development (PTS.II) Department, Secretariat Buildings, Hyderabad.

2. The Commissioner, Panchayat Raj and Rural Development, Andhra Pradesh, Hyderabad.

3. The Collector (Panchayat Wing), Rangareddy District.

4. 2 CD copies

5. 2 Copies to the Government Pleader for Panchayat Raj and Rural Development, High Court Buildings, Hyderabad (OUT)